

REMARKS

Entry of the foregoing and further and favorable consideration of the subject application in light of the following remarks is respectfully requested.

Applicants note that new claim 13 is merely claim 2 rewritten in independent form. Subsequent claims 14-23 represent current claims 3-12 rewritten to depend from new independent claim 13 either directly or indirectly. Accordingly, Applicants respectfully submit that no new matter has been added and that such an amendment does not require any further search and/or consideration. Claim 2 has been canceled, without prejudice to or disclaimer of the subject matter contained therein.

Claims 1-12 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. The Examiner alleges that the desired physical characteristics of the composite are recited, rather than the specific composition of the end product. Applicants respectfully disagree with this argument.

Initially, Applicants note that claim 2 (now canceled) specified that the super absorbent porous structure is a polyacrylate-based foam. Accordingly, claim 2 does, contrary to the Examiner's rejection, recite a composition, not merely structural and/or functional characteristics. Therefore, Applicants believe that claim 2 was improperly included in the Examiner's rejection. Further, Applicants respectfully submit that new claim 13 (claim 2 rewritten in independent form) and its subsequent dependent claims 14-23 also would not fall within the scope of the current rejection.

Applicants note that numerous U.S. patents have been granted with claims reciting physical characteristics of portions of the claimed product. For example, Applicants respectfully direct the Examiner's attention to claims 1 and 5 of U.S. Patent No. 6,946,186; claim 1 of U.S. Patent No. 6,994,698; and claim 1 of U.S.

Patent No. 6,210,385. These exemplary patents all refer to Gurley stiffness values as defining characteristics of the claimed invention. Applicants respectfully submit that using such structural characteristics as defining claim language is therefore not only proper, but exceedingly common.

Moreover, the absorbent structure of the presently claimed invention is further defined as a superabsorbent porous structure with a defined Gurley stiffness value and density value. Applicants further note that the measurement of each of these structural characteristics is clearly described in the specification, *e.g.*, in paragraphs [0011], [0012], [0014] and in the examples beginning at paragraph [0034]. In light of this, Applicants respectfully submit that the claimed absorbent article does include sufficient structure to enable one of ordinary skill in the art to determine whether or not the claim was infringed as required by 35 U.S.C. § 112, second paragraph.

Even assuming *arguendo*, as the Examiner contends, that the Gurley stiffness values and density are performance characteristics rather than structural characteristics, “[t]here is nothing inherently wrong with defining some part of an invention in functional terms.” See M.P.E.P. § 2173.05(g) citing *In re Swinehart*, 439 F.2d 210, 169 USPQ 226 (CCPA 1971). Applicants respectfully submit that the present claim language is acceptable because it sets forth finite and definite boundaries for one skilled in the art. See, *e.g.*, *In re Barr*, 444 F.2d 588, 170 USPQ 33 (CCPA 1971). Moreover, Applicants respectfully disagree with the Examiner’s comment regarding the open-ended range of the density. Despite the fact that the claims recite density in terms of “exceeding $x \text{ g/cm}^3$,” it is clear to one skilled in the art that this range does not continue *ad infinitum*.

In view of the foregoing amendments and remarks, Applicants respectfully submit that all currently pending claims fully comply with 35 U.S.C. §112, second paragraph. Applicants respectfully request that the Examiner reconsider and withdraw the outstanding rejection. In the event that there are any questions concerning this response, or the application in general, the Examiner is respectfully urged to telephone the undersigned attorney so that prosecution of the application may be expedited.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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By: William C. Rowland
William C. Rowland
Registration No. 30,888

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620